

Add Section 6398 to the Sales and Use Tax Law to allow a credit to on-reservation retailers for any state retail sales or use tax paid to a tribal authority that levies a similar retail sales or use tax.

Source: Honorable Johan Klehs

Under existing law, the state is prohibited from imposing a tax on the sale or use of tangible personal property where it is prohibited from doing so under the Constitution or the laws of the United States. Under the Board's Regulation 1616, "Federal Areas," sales by Indians are not subject to sales tax; however, Indian retailers are required to collect use tax from purchasers and must register with the Board for that purpose. In addition, on-reservation sales by non-Indian retailers are exempt from sales tax. However, such retailers are also required to collect the applicable use tax from the purchasers and remit it to the Board.

Under the current taxing structure, none of the state or local retail sales or use taxes generated by sales made on Indian reservations are shared with any of the tribes, even though many tribes provide services to Indians as well as non-Indians, including ambulance, fire and police protection, and, in some cases, public utility services. In many cases, the net effect is a revenue loss for the reservations.

This proposal would address this issue by enabling the reservation to levy its own sales and use taxes by way of an allowance for a state tax credit to retailers. This proposal would allow retailers operating within the boundaries of an Indian reservation to obtain a state tax credit for any retail sales or use tax levied by a tribal authority, provided the retailer has paid that tax to the tribal authority. The effect of this proposal would be that the Indian reservations could levy their own state sales or use taxes, and retain the revenues generated by the on-reservation retailers. That way, the sales tax rate would remain competitive with off-reservation retailers, and at the same time, enable the reservations to receive the benefit of the tax generated therein. This proposal would only provide a state tax credit; therefore, the local tax would continue to be collected by retailers and reported to the Board in the same manner as it is currently, and would, in turn, be allocated by the Board to local governments in the same manner as the tax is currently allocated.

Section 6398 is added to the Revenue and Taxation Code to read:

6398. (a) For any retailer operating within the boundaries of an Indian reservation, a credit shall be allowed against, but shall not exceed, the taxes

imposed by Section 6051 and 6051.3 or 6201 and 6201.3, to the extent that the retailer has paid a retail sales or use tax imposed with respect to that property to the tribal authority of an Indian reservation. The credit shall only be allowed if a similar retail sales or use tax is levied by the tribal authority of an Indian reservation. For purposes of the preceding sentence, "similar" means a sales or use tax that is imposed at a rate equal to or in excess of the tax imposed pursuant to Sections 6051 and 6051.3, and that incorporates the same exemptions and exclusions from the tax under this part.

(b) For purposes of this section, an "Indian reservation" includes reservations, rancherias, and any land held by the United States in trust for any Indian tribe or individual Indian.